

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SHARON L. MILLER,

Case No. 12-CV-1308 (PJS/TNL)

Plaintiff,

v.

ORDER ADOPTING REPORT AND
RECOMMENDATION

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Lionel H. Peabody, PEABODY LAW OFFICE, for plaintiff.

Ana H. Voss, UNITED STATES ATTORNEY'S OFFICE, for defendant.

This matter is before the Court on plaintiff Sharon L. Miller's objection to the August 5, 2013 Report and Recommendation ("R&R") of Magistrate Judge Tony N. Leung. Judge Leung recommends granting defendant's motion for summary judgment and denying Miller's motion for summary judgment. ECF No. 19. The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court adopts Judge Leung's R&R.

The bulk of Miller's objection concerns the decision by the Administrative Law Judge ("ALJ") to assign little weight to the opinion of Miller's primary care physician, Dr. Lorraine Turner. As explained by the ALJ and in the R&R, however, Turner's opinion as to Miller's physical impairments were belied by the objective medical evidence and strikingly inconsistent with Turner's own treatment notes. *See* R&R at 25-28; ECF No. 7-2 at 19. "An ALJ may justifiably discount a treating physician's opinion when that opinion 'is inconsistent with the physician's clinical treatment notes.'" *Martise v. Astrue*, 641 F.3d 909, 925 (8th Cir. 2011) (quoting *Davidson v. Astrue*, 578 F.3d 838, 843 (8th Cir. 2009)). *See also* *Haggard v. Apfel*, 175

F.3d 591, 595 (8th Cir. 1999) (treating doctor’s opinion “is afforded less deference when the medical evidence in the record as a whole contradicts the opinion itself.”). Accordingly, the ALJ did not err in failing to assign substantial or controlling weight to Turner’s opinion about the extent of Miller’s physical impairments.

Similarly, Miller objects that Turner’s opinion as to the extent of Miller’s mental impairments should have been accorded substantial or controlling weight. (Turner is not a psychiatrist or psychologist; she is simply Miller’s family doctor.) The ALJ discounted Turner’s opinion as to Miller’s mental condition “because it is not supported by objective medical evidence but rather appears to be based on the claimant’s subjective complaints.” ECF No. 7-2 at 17. As the Eighth Circuit has noted, a treating physician’s opinion “is properly discounted when it is based on [the] claimant’s subjective complaints” as opposed to the “physician’s own objective findings.” *Slavicek v. Colvin*, No. 12-3799, 2013 WL 4483476, at *1 (8th Cir. Aug. 23, 2013) (per curiam). Moreover, substantial evidence on the record as a whole contradicts Turner’s opinion as to the severity of Miller’s mental impairments. *See, e.g.*, ECF No. 7-8 at 45 (findings of examining psychologist Robert W. Hoffman that Miller can concentrate on and understand ordinary instructions and carry out a limited number of tasks with mild persistence and at an intermittent pace); *id.* at 73-75 (conclusion of reviewing psychologist Thomas L. Kuhlman that Miller was only moderately limited in a handful of areas, could understand and remember routine instructions, and could carry out simple tasks with adequate persistence and pace); *id.* at 113 (conclusion of reviewing psychiatrist Joseph Cools that Miller retained the capacity to learn and perform simple tasks with adequate pace and endurance).

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court OVERRULES plaintiff Sharon L. Miller's objection [ECF No. 20] and ADOPTS the R&R [ECF No. 19]. Accordingly, IT IS HEREBY ORDERED THAT:

1. Plaintiff Sharon L. Miller's motion for summary judgment [ECF No. 12] is DENIED.
2. Defendant's motion for summary judgment [ECF No. 15] is GRANTED.
3. Plaintiff's complaint [ECF No. 1] is DISMISSED WITH PREJUDICE AND ON THE MERITS.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 5, 2013

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge